

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49990 of 2021**

Arising Out of PS. Case No.-212 Year-2020 Thana- JAYNAGAR District- Madhubani

Shiv Kumar Sah, S/o Chandrabir Sah @ Chandravir Sah, Resident of Village-
Parba, P.S.- Jaynagar, District- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ashok Kumar, Advocate

For the Opposite Party/s : Mr.Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

ORAL ORDER

3 06-07-2022 The applicant/accused in Crime No. 212 of 2020 registered with Jaynagar Police Station for the offences punishable under Sections 363, 366(A) r/w Section 34 of the Indian Penal Code as well as Section 12 of the POCSO Act, by this application is seeking his release on bail during pendency of the trial. His first bail application was rejected by the coordinate Bench of this Court vide order dated 10.02.2021 passed in Criminal Misc. No. 38835 of 2020.

Heard both sides.

The learned Additional Public Prosecutor opposed the application by contending that the applicant has committed rape on the minor female child child. According to him “Galat Kam” in vernacular means commission of rape.

I have considered the submissions so advanced and



also perused the materials placed before me.

The FIR of the subject crime was filed by one Hanuman who happens to be father of the minor female child. He alleged that about six persons kidnapped her minor daughter in order to subject his minor daughter to gang rape.

Statement of the victim girl came to be recorded by the learned Magistrate resorting to the provision of Section 164 of the Cr.P.C. The victim female child has stated that she was kidnapped by the applicant as well as one another named Chandravir. Then they were joined by other accused persons and she was then taken to Patna. Thereafter she was left at Jaynagar. The victim female child stated that the applicant had committed "Galat Kam" with her. On this backdrop, it needs to be noted that the prosecution has not filed the charge sheet by invoking Section 4 and 6 of the POCSO Act despite the fact that the victim female child has stated her age as 16 years. Similarly the charge sheet is not filed for the offence punishable under Section 376 of the Indian Penal Code. Nothing is pointed out to demonstrate that the applicant had committed penetrative sexual assault on the victim female child.

The applicant is undergoing pretrial detention from



31.07.2020. Offence is alleged against him are under Sections 363, 366(A) r/w Section 34 of the Indian Penal Code as well as Section 12 of the POCSO Act, i.e, sexual harassment.

Considering the nature of the averments against the applicant/accused as well as the fact that the trial has not proceeded further despite a lapse of sufficient period of time. I am of the opinion that further pretrial detention of the applicant is not warranted. Therefore, the order :-

i. The application is allowed.

ii. The applicant/accused in Crime No. 212 of 2020 registered with Jaynagar Police Station be released on bail on executing P.R. bond of Rs.20,000/- (Rupees Twenty Thousand) on furnishing surety of the like amount to the satisfaction of the trial court with the following conditions: -

(I) The applicant/accused should not extend any threat, promise of inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II) The applicant/accused should cooperate the trial court in expeditious disposal of the trial against him.

(III) The applicant/accused should not contact the members of the prosecuting party as well as witnesses in this



case in any manner till conclusion of the trial.

(IV) The applicant should not repeat commission of similar offence in future and if he is found to be involved in commission of similar offence, the State is at liberty to apply for cancellation of bail granted to the applicant in the instant case.

The applicant to remove all office objections forthwith and the Registry to issue the certified copy of this order only after removal of office objections by the appellant/accused.

Bhardwaj/-

(A. M. Badar, J)

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